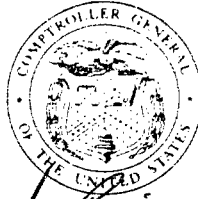


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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Protest of Bid Rejection for Late Modification]*

FILE: B-199628

DATE: November 28, 1980

MATTER OF: Skip Kirchdorfer, Inc. *DLG00927*

**DIGEST:**

1. Where solicitation indicates that telephonic receipt of telegraphic bid modification does not qualify telegram as being timely, agency properly rejected bid modification as late even though telephonic notice was received from Western Union prior to bid opening.
2. In absence of acceptable evidence that mailgram confirming bid modification was received prior to bid opening, modification was properly rejected as late. The only acceptable evidence to establish time of receipt by Government installation is the time/date stamp of such installation on bid wrapper or other documentary evidence of receipt maintained by installation.
3. Even if protester could show by acceptable evidence that bid modification was received at Government installation prior to bid opening, lateness has not been shown to be due solely to Government mishandling where envelope bore no indication of contents, base mail sorting process is ordinarily just being completed at time set for bid opening, and no showing of delay in normal mail distribution process has been made.

Skip Kirchdorfer, Inc. (SKI) protests the award of a contract to Allied Painting and Decorating Company *DLG05589* (Allied) as the low bidder under invitation for bids (IFB) No. F22600-80-B-0046, issued by Keesler Air Force *46C0014* Base, Mississippi (Air Force). SKI asserts that a telegraphic modification which reduced its bid price below

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*113866*

that of Allied was improperly rejected by the contracting officer as a late modification.

Bid opening was scheduled for 10:00 a.m. on July 8, 1980. On July 7, 1980, the contracting officer received telephonic notice of a modification to the bid submitted by SKI from Western Union. The contracting officer informed Western Union that telephonic notification could not be accepted and that the telegram itself must be received prior to bid opening. The confirming mailgram was received through the normal installation distribution system with receipt noted by the contracting officer at 11:50 a.m. on July 8, 1980.

The "Late Bids, Modifications or Withdrawals of Bids" clause contained in the solicitation provided in pertinent part as follows:

"(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

\* \* \* \* \*

(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

"(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above \* \* \*

"(c) The only acceptable evidence to establish:

\* \* \* \* \*

"(ii) the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

\* \* \* \* \*

"NOTE: The term 'telegram' includes mailgrams.

"NOTE: Telephonic receipt of telegraphic bids, proposals, modifications or withdrawals do not qualify the telegram as being timely. The telegram itself must be received by the proper official at the Government installation by the time specified."

SKI first contends that its bid modification was not late because the contracting officer had actual knowledge of it by virtue of notice received from an independent source, i.e., Western Union. We find this argument to be without merit.

The IFB clearly provided that telephonic receipt of telegraphic modifications would not be accepted and that the telegram itself had to be received by the proper official at the Government installation by the specified time. In accordance with Defense Acquisition Regulation (DAR) § 2-301 (1976 ed.), for a bid to be considered for award it must comply with the IFB (as to the method and timeliness of submission and as to the substance of any resulting contract) so that all bidders may stand on an equal footing and the integrity of the competitive bidding system may be maintained. Telephonic modifications, even from "an independent source" such as Western Union, are not acceptable. James Luterback Construction Company, B-190012, October 4, 1977, 77-2 CPD 265. Since SKI's bid as modified did not comply with the IFB as to timely submission, it cannot be considered for award. Graphic Controls Corporation, B-194698, May 23, 1979, 79-1 CPD 373.

SKI alleges, however, that late receipt of the mailgram confirming its bid modification was due solely to mishandling after receipt at the Government installation. In support of this position, SKI notes that according to the Air Force, the base mail was picked up from the U.S. Postal Service at approximately 8:30 a.m. Therefore, SKI states, the confirming mailgram arrived at the Government installation approximately 90 minutes prior to the scheduled bid opening, but did not reach the contracting officer

in a timely fashion. SKI believes that this delay occurred because the military distribution system was not staffed properly.

In addition, SKI notes that no date stamp was applied to the mailgram when it arrived at the installation and that the Government does not know exactly when the mailgram was delivered to the contracting office. The contracting officer discovered the mailgram at 11:50 a.m. and then applied a handwritten time and date to it.

SKI alleges that the contracting office was understaffed and that this contributed to the mishandling since with adequate staff, the bid modification might have been discovered earlier. SKI also alleges that the contracting officer's normal practice is to pick up telegrams or certified or registered mail from the military distribution center prior to bid opening, but that he failed to do so in this instance.

The Air Force reports that after base mail is picked up from the U.S. Post Office at approximately 8:30 a.m., it is broken down, sorted and dispatched for delivery at about 10:00 a.m. Mail is normally delivered to the contracting officer between 10:40 and 11:30 a.m. On July 8, 1980, no unusual delays in mail delivery occurred.

The record shows that the distribution center normally calls the contracting officer if a bid sent certified or registered mail is received on the day of bid opening, in which case the contracting officer attempts to pick up the bid. In addition, if called by the Western Union office on base, the contracting officer will attempt to pick up a telegram received on the day of bid opening. Apparently, however, mailgrams are not afforded similar treatment, since mailgrams are delivered as ordinary first class mail.

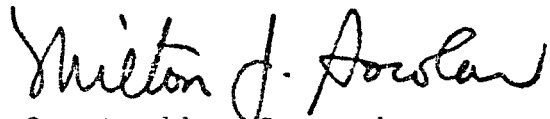
Before we can consider the question of mishandling, the time of receipt at the Government installation prior to bid opening must be established. Instrumentation and Mechanical Systems, Inc., B-189739, October 25, 1977, 77-2 CPD 325; Monitor Northwest Company, B-193357, June 19, 1979, 79-1 CPD 437. The only evidence acceptable to establish the time of receipt at the Government installation is the time/date stamp on the bid wrapper or "other documentary evidence maintained

by the installation" and this means "contemporaneous evidence rather than after the fact affidavits, for example." Adrian L. Merton, Inc., B-190982, May 9, 1978, 78-1 CPD 351; Woodbridge Cleaners, Inc., B-194361, October 17, 1979, 79-2 CPD 261.

In this case, the only documentary evidence of receipt maintained by the installation is the handwritten time and date applied by the contracting officer after his discovery of the mailgram at 11:50 a.m. on July 8, 1980. There is no record to indicate that the installation distribution center received the mailgram in sufficient time for delivery prior to bid opening; the evidence presented in this regard is purely circumstantial and does not meet the strict evidentiary requirements of the DAR or our Office to establish timely receipt at the installation.

Moreover, even if the protester could show by acceptable evidence that the mailgram was received before bid opening, we are not convinced that the late receipt of SKI's bid modification was due solely to Government mishandling. The envelope containing the mailgram apparently bore no indication of its contents, and therefore not have alerted the distribution center to notify the contracting officer that a bid modification had been received. See Ads Audio Visual Productions, Inc.; The Public Advertising Council, B-193248; B-193248.2, April 18, 1979, 79-1 CPD 275; Monitor Northwest Company, *supra*. The mailgram was simply addressed to the "Base Contracts Office, Building 5106." In addition, the base mail sorting process is normally just being completed at the time set for bid opening in this case -- 10:00 a.m. Therefore, even if during sorting the mailgram had been recognized as containing a bid modification, it is apparent that the time remaining prior to bid opening would have been insufficient to allow timely receipt by the contracting officer. Also it has not been shown that the normal base mail distribution process on July 8, 1980, was delayed due to improper staffing or otherwise. Nor is there any evidence to suggest that the mailgram arrived in the contracting office prior to bid opening.

The protest is denied.



For the Comptroller General  
of the United States